

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

**CREATIVE INTERNET
ADVERTISING CORPORATION,**

Plaintiff,

v.

YAHOO! INC.

Defendants.

CIVIL ACTION NO. 6:07-cv-354

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

Creative Internet Advertising Corporation (“Plaintiff”) files this Second Amended Complaint against Yahoo! Inc. (“Defendant”) for infringement of United States Patent No. 6,205,432 (“‘432 Patent”).

JURISDICTION

1. This is an action for patent infringement under Title 35 of the United States Code. Plaintiff is seeking injunctive relief as well as damages.

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States patent statutes.

3. Plaintiff Creative Internet Advertising Corporation is a Delaware corporation and is located in Newport Beach, California.

4. Defendant Yahoo! Inc. is a Delaware corporation with its principal office in Sunnyvale, California.

5. On information and belief, Defendant’s products that are alleged herein to infringe are made, used, imported, offered for sale and/or sold in the Eastern District of Texas.

6. This Court has personal jurisdiction over Defendant because Defendant has committed acts of infringement in this district; does business in this district; and/or has systematic and continuous contacts in this district.

VENUE

7. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391(c) and 1400(b), because Defendant is deemed to reside in this district. In addition, and in the alternative, Defendant has committed acts of infringement in this district and Defendant has regular and established places of business in this district.

INFRINGEMENT OF U.S. PATENT NO. 6,205,432

8. Plaintiff incorporates paragraphs number 1 through 7 herein by reference.

9. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271 *et seq.*

10. Plaintiff Creative Internet Advertising Corporation is the exclusive owner and licensee of United States Patent No. 6,205,432 with rights to enforce the Patent and sue infringers.

11. A copy of United States Patent No. 6,205,432, titled Background Advertising System is attached to Plaintiff's First Amended Complaint as Exhibit A (Doc. No. 32-2).

12. The '432 Patent is valid, enforceable and was duly issued in full compliance with Title 35 of the United States Code.

13. On information and belief, Defendant Yahoo! Inc. has infringed and continues to infringe on the '432 Patent by making, using, importing, offering for sale and/or selling products among other things, covered by one or more claims of the '432 Patent, including, but not limited to, Yahoo Mail.

14. On information and belief, Defendant contributorily infringed one or more claims of the '432 Patent and continues to contributorily infringe one or more claims of the '432 Patent, pursuant to 35 U.S.C. § 271 in the United States, including in this judicial district.

15. On information and belief, Defendant has induced others to infringe one or more claims of the '432 Patent and continues to induce others to infringe one or more claims of the '432 Patent, pursuant to 35 U.S.C. § 271 in the United States, including in this judicial district.

16. Defendant's actions complained of herein will continue unless Defendant is enjoined by this Court.

17. Defendant's infringement is willful because Defendant has in the past, and presently continues to infringe as alleged herein, with knowledge of the '432 patent.

18. This case is exceptional pursuant to the provisions of 35 U.S.C. § 285.

19. Plaintiff has complied with 35 U.S.C. § 287.

20. Defendant's actions complained of herein are causing irreparable harm and monetary damage to Plaintiff and will continue to do so unless and until Defendant is enjoined and restrained by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks the Court to:

- A. Enter judgment for Plaintiff on this Complaint;
- B. Enjoin Defendant, their agents, officers, servants, employees, attorneys and all persons in active concert or participation with Defendant who receive notice of the order from further infringement of United States Patent No. 6,205,432;
- C. Award Plaintiff damages resulting from Defendant's infringement in accordance with 35 U.S.C. § 284;

- D. Treble the damages in accordance with the provisions of 35 U.S.C. § 284;
- E. Find the case to be exceptional under the provisions of 35 U.S.C. § 285;
- F. Award Plaintiff reasonable attorney fees under 35 U.S.C. § 285;
- G. Order the impounding and destruction of all Defendant's products that infringe the '432 Patent;
- H. Award Plaintiff interest and costs; and
- I. Award Plaintiff such further relief to which the Courts finds Plaintiff entitled under law or equity.

Respectfully Submitted,

/s/ Anthony G. Simon
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by e-mail via the Eastern District of Texas ECF System to all counsel of record on April 29, 2008.

/s/ Anthony G. Simon
Anthony G. Simon